S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **CONSUMERS ENERGY COMPANY** for authority to increase its rates for the generation and the distribution of electricity and for other relief.	))))))	Case No. U-17087

<u>NOTICE OF PROPOSAL FOR DECISION</u>

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on January 19, 2017.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before February 3, 2017, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before February 17, 2017. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Mark E. Cummins

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Mark E. Cummins
Administrative Law Judge

January 19, 2017
Lansing, Michigan

S T A T E O F M I C H I G A N

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PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

This proceeding involves the remand of a limited number of issues initially addressed by the Commission in previous orders in Case No. U-17087, such remand having been directed by the Michigan Court of Appeals through its April 30, 2015 opinion involving a pair of consolidated appeals concerning the Commission's approved treatment of the Advanced Metering Infrastructure (AMI) program implemented by Consumers Energy Company (Consumers). See, Attorney General v. Public Service Comm., unpublished opinion per curiam of the Court of Appeals in Docket Nos. 317434 and 317456 (the April 30 order), rev'd in part, 873 NW2d 108 (2016).

The genesis of the proceeding currently before the Commission was Consumers' filing, on September 19, 2012, of a request for a $148.3 million rate increase, as well as for other relief. Pursuant to due notice, a prehearing conference concerning that application was held before Administrative Law Judge Mark E. Cummins (ALJ) on October 19, 2012. In the course of the prehearing conference, the ALJ granted numerous petitions to intervene, including one filed by the Michigan Department of the Attorney General (Attorney General). The Commission Staff (Staff) also participated in the proceedings.

On May 7, 2013, the parties filed a settlement agreement resolving most of the issues in the case. On May 15, 2013, the Commission issued an order (the May 15 order) approving the settlement. That agreement (and the Commission's corresponding order) resolved all disputes with the exception of certain issues concerning Consumers' AMI program, including the amount of the fees associated with choosing to opt-out of having a transmitting meter like that needed to provide the functionality envisioned by the program. See, Exhibit A attached to the May 15 order, paragraph 5. With regard to the issues that were explicitly left out of the settlement, the parties requested that the Commission specifically address those matters based on their initial and reply briefs.

Consumers initially proposed that opt-out fees be applied to customers requesting to retain a non-transmitting meter, and offered evidence to show that the fees the utility proposed were cost-based.[1] The Staff, having performed its own analysis based on cost-of-service principles, recommended that Consumers' proposed monthly fees for opting-out of the AMI program be reduced from \$11.12 to \$9.72, and Consumers agreed. On June 28, 2013, the Commission issued yet another order in Case No. U-17087

[1] Consumers appears to have provided that evidence in response to a directive contained in the Commission's September 11, 2012 order in Case No. U-17000, at p. 5, by which the Commission required that any non-transmitting meter program employed by Michigan's utilities must be based on a cost-of-service evaluation.

(the June 28 order), which adopted tariffs for the cost-based opt-out fees agreed to by both the Staff and the utility.

A coalition of utility customers (who were not originally parties to the underlying rate case) known as Michelle Rison and the Residential Customer Group--and who will be referred to jointly as the RCG--appealed the June 28 order, specifically taking issue with the imposition and amount of the opt-out fees. By way of its previously-mentioned April 30 order, the Court of Appeals affirmed in part, reversed in part, and remanded the June 28 order for further proceedings.[2] In the April 30 order, the court specifically found that:

> In this case, the PSC's June 28, 2013 order approved tariff rates for customers who elected either to retain a standard meter or to replace a transmitting AMI meter with a standard meter. The *approved rates were based on the PSC's determination of the actual costs* associated with maintaining equipment and services for customers with non-transmitting meters. A decision to impose charges and expenses based on a utility's costs of operation is well within the ratemaking authority of the PSC. *Ford Motor Co, 221 Mich App at 375.* Accordingly, the PSC did not exceed its statutory authority.

Slip opinion, p. 5 (emphasis added). Nevertheless, the court went on to state as follows:

> Appellant customers argue that the PSC's approval of the tariffs requiring customers who opt-out of the AMI program to pay a one-time charge of either $69.39 or $123.91 and a monthly charge of $9.72 was unjust, unreasonable, and unsupported by evidence in the record. At oral argument before this Court, the parties raised numerous arguments regarding whether the tariff amounts approved by the PSC represented the actual costs associated with continued use of analog meters, and whether

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[2] The Attorney General also appealed the June 28 order, specifically the Commission's approval to let Consumers operate any sort of AMI program, claiming that the Commission lacked the power to do so. On January 27, 2016, the Michigan Supreme Court reversed the holding of the Court of Appeals on that particular issue [which arose in the context of Court of Appeals Docket No. 317434, and which appears to be further complicated by the fact that the Attorney General was a signatory to the approved settlement agreement], and remanded the issue to the Court of Appeals for further consideration. See, 498 Mich 967-968 (2016). As for the Court of Appeals' ruling on issues contained in Docket No. 317456, however, the Supreme Court stated that its current ruling did nothing to disturb the disposition of that docket. See, Id.

> any of these costs were already accounted for in the utility's rates. Unfortunately, it appears that these issues were given only cursory analysis in the PSC lower court record. We conclude that the record on this issue is inadequate to support an informed decision by the Court at this time. Accordingly, we remand this issue to the PSC to conduct a contested case hearing on this significant issue. The parties are entitled to present their positions, and the PSC shall issue a written opinion on its findings of fact and conclusions of law.

Slip opinion, pp. 5-6. In issuing this particular directive, the Court of Appeals went on to assert that:

> On remand, the PSC should clarify the purposes and nature of the opt-out tariff by addressing whether the tariff represents a reimbursement for costs of service, or whether the tariff constitutes something more akin to a tax, sanction, or penalty imposed upon customers who choose to opt out of the AMI program. Id., p. 6, fn. 3.

Thus, as expressed above, the Court remanded--from the June 28 order--the issue of the purpose and nature of the opt-out fee, and required a contested case hearing. This ruling was not directly appealed.[3]

On January 19, 2016, the Commission issued an order inviting all interested parties to submit briefs addressing the scope of the contested case hearing mandated by the Court of Appeals. Specifically, the Commission invited these parties or persons to address the following issues:

1. Whether the April 30 order requires the Commission, in the contested case on remand, to address issues other than clarification of the purpose and nature of Consumers' opt-out tariff;

[3] Nevertheless, on July 22, 2015, the Court of Appeals denied the Commission's motion for reconsideration. On August 27, 2015, the Attorney General filed a motion with the Commission to stay implementation of the opt-out fee until such time as the Commission addressed the remand. On September 23, 2015, the Commission issued an order denying that motion on the grounds that the Attorney General failed to satisfy the elements required under MCR 7.123(E)(3) for a stay. On October 23, 2015, the Attorney filed a petition for rehearing of the Commission's September 23, 2015 order denying its request for a stay.

2. Whether that contested case should address solely the evidence on which the Commission's June 28 order was based, or should provide for the filing of new evidence; and

3. Whether evidence filed in Consumers' intervening general rate case (Case No. U-17735) regarding the opt-out tariff should be considered in the upcoming contested case directed by the remand.

See, the Commission's January 19, 2016 order in Case No. U-17087 (the January 19 order), pp. 3-4.

On February 18, 2016, initial briefs were filed by the RCG, the Attorney General, Consumers, and the Staff, and on March 4, 2016 the RCG, Consumers, and the Staff filed reply briefs. The respective positions espoused by these parties can be summarized as follows:

The RCG argued, among other things, that: (1) on remand, the Commission should both grant its request to intervene in the remand case and address issues beyond the scope of the Court of Appeals' decision, specifically examining questions related to privacy, safety, and health; (2) the continued allowance of manual meter reads will eliminate any cost causation attributable to opt-out customers; (3) opt-out customers do not cause any AMI-related expenses; (4) the evidence presented in Case No. U-17735 is much preferable to that received in Case No. U-17087, and that this testimony shows that the tariff adopted by the Commission is, indeed, a penalty; (5) the current opt-out tariff's fee structure should be reduced to zero, with an opt-in tariff being adopted in its place; and (6) notwithstanding assertions by others, it has standing to participate in the remand case.

The Attorney General: (1) agreed with the RCG that the Commission should expand the scope of this proceeding beyond that specifically discussed in the Court's remand order, and instead address all issues concerning the implementation of an AMI program; (2) recommended that the Commission require the utility to conduct, as part of the current proceeding, an updated cost-benefit analysis regarding the implementation of AMI as a whole; and (3) urged the Commission to allow the introduction of evidence beyond that initially received in the context of Case No. U-17087.

For its part, Consumers argued that: (1) the scope of the remand should not be extended beyond the specific areas described by the Court of Appeals, particularly in light of the fact that the additional issues now raised by the RCG have been both raised and rejected by the Commission in numerous prior cases; (2) consistent with previous Commission orders, and contrary to the RCG's apparent belief, any entity that was not a party to the underlying rate case lacks standing to proceed on remand;[4] (3) the various aspects of the opt-out tariff were vigorously litigated in the context of Case No. U-17735, RCG was a full participant to that proceeding, and evidence offered therein shows that not only do the approved AMI-related fees not constitute a penalty, but that the program's charges are actually lower than the actual cost of serving customers who opt out and thus require such services as manual meter reads; and (4) based on the amount of evidence provided and the breadth of issues addressed during the evidentiary hearings in Case No. U-17735, it favors the use of that evidence in the context of this remand, but goes on to assert that new evidence should be allowed in the event that the Commission elects not to consider the record in that proceeding.

[4] See, the Commission's March 6, 2014 order in Case No. U-15645, pp. 5-9; See also, the December 6, 2012 order in Case No. U-15768, pp. 4-5.

As for the Staff, it asserted, among other things, that: (1) the consideration of any issues other than those specifically listed by the Court of Appeals in its remand order--such as those relating to privacy, safety, or health--should be prohibited; (2) the sole focus of the hearing on remand should be to clarify the purposes and nature of the opt-out tariff by addressing whether the tariff simply provides reimbursement for the cost of providing opt-out service that is not already accounted for in Consumers' base rates, or whether the tariff constitutes something more akin to a tax, sanction, or penalty; (3) the record assembled in Case No. U-17735, as well as any new evidence relating to the remanded issues, should be considered by the Commission in this proceeding; and (4) the RCG's requests for intervention on remand should be granted.

Based on the information provided and positions espoused in these parties' briefs, the Commission ruled as follows in its March 29, 2016 order in Case No. U-17087 (the March 29 order):

> By this order, the Commission commences the remand proceeding. The issues addressed in the proceeding shall be those articulated by the Court of Appeals, namely, the proceeding shall "clarify the purpose and nature of the opt-out tariff by addressing whether the tariff represents a reimbursement for costs of service, or whether the tariff constitutes something more akin to a tax, sanction, or penalty," and "whether any of these costs were already accounted for in the utility's rates." April 30 order, pp. 5-6. These questions were answered in the June 28 order, pp. 3-9, wherein the Commission evaluated the evidence and arguments made by Consumers, the Staff, and the Attorney General, and adopted the cost-based fees proposed by Consumers as modified by the Staff. The Court then affirmed the Commission's authority to do so by stating "The approved rates were based on the PSC's determination of the actual costs associated with maintaining equipment and services for customers with non-transmitting meters. A decision to impose charges and expenses based on a utility's costs of operation is well within the ratemaking authority of the PSC." April 30 order, p. 5. Nevertheless, the Court has ordered a contested case on the enumerated issues. Issues that do not fit with the scope of the remanded issues will not be entertained.

> The Commission agrees with the parties and favors use of the evidence provided in Case No. U-17735, wherein the same issues were contested. The Commission also authorizes the parties to the remand to introduce new evidence. New evidence must be evidence that became available after June 17, 2015 (the date on which the record closed in Case No. U-17735), and must be relevant to the issues remanded by the Court – that is, whether the amount of the opt-out tariff is cost-based or is in the nature of a penalty, and whether the amount of the opt-out tariff is being double collected because it is already included in base rates.
>
> March 29, 2016 order, pp. 7-8 (footnote omitted).

Notwithstanding the multi-layered procedural history described above, the activities undertaken with regard to the current remand proceeding have been relatively straightforward. In this regard, evidentiary hearings were conducted on October 5, 2016. In the course of those hearings, a total of five witnesses were offered by the parties, one each by the RCG, the Attorney General, and Consumers, as well as two on behalf of the Staff. Overall, the record consists of 2 volumes of transcript totaling 166 pages, as well as 16 exhibits, of which 14 were received into evidence. Moreover, consistent with the agreed upon (although twice revised) schedule for this matter, initial briefs and reply briefs were filed on November 16 and December 6, 2016, respectively, by each of the four above-mentioned parties.

II.

<u>TESTIMONY AND POSITIONS OF THE PARTIES</u>

In the section that follows, this Proposal for Decision (PFD) will briefly describe the evidence offered by the parties, as well as the positions they suggest for adoption by the Commission in response to the Court of Appeals' remand order.

A. RCG

The RCG presented testimony from Geoffrey C. Crandall, the Vice President of MSB Energy Associates. Mr. Crandall began his presentation by noting (as did the Court of Appeals in the context of its April 30 order) that, based on authority granted through past Commission orders, Consumers' AMI-related tariff allows the utility to impose upon a customer who elects to opt-out of the AMI program: (1) a one-time charge of $69.39 if a transmitting meter has not yet been installed on that customer's property, or a $129.91 "upfront cost" if such a meter has already been installed at that location; and (2) a "permanent, never ending" fee in the amount of $9.72 per month. 2 Tr. 115. Moreover, he continued, the testimony offered by Consumers' witness in this proceeding proposes that the Commission dramatically increase those AMI opt-out fees, all "without regard to actual costs." 2 Tr. 116.

According to Mr. Crandall, the utility has again "not provided an adequate basis to demonstrate the financial viability and reasonableness" of either the upfront charge or ongoing monthly fees that the company seeks to impose on customers who seek to have non-transmitting meters. 2 Tr. 116-117. To the contrary, he contends, the utility (by electing to implement the AMI program in the first place) "is the cause of these costs," as opposed to "opt-out customers who did not cause [Consumers] to incur the AMI expenses." 2 Tr. 119. Moreover, Mr. Crandall asserted that all of the company's customers--whether they elect to use a transmitting meter or not--are paying for the cost of Consumers' AMI program via base rates and, as such, the charges imposed upon ratepayers that elect to opt-out of the utility's AMI program are essentially "a form of punitive pricing" that "puts pressure on customers to accept the installation of an advanced meter" regardless of whether they may "have valid and serious concerns"[5] regarding the installation of such a meter on their property. 2 Tr. 119-120. Finally, he argued that Consumers' opt-out tariff should both be devoid of any charges, as some other states have done, and include a customer consent provision (basically requiring the utility to get express consent from the customer prior to the installation of a transmitting meter).

Based largely on Mr. Crandall's testimony, the RCG essentially offers three arguments with regard to the resolution of this remand proceeding. First, it contends that the Commission should reverse the ALJ's October 5, 2016 ruling in which he struck portions of Mr. Crandall's testimony, along with the ALJ's decision to deny receipt of Exhibits RCG-2 and RCG-4. The RCG's contention in this regard is that Mr. Crandall's testimony regarding concerns expressed by RCG's members regarding health, safety, and privacy "directly address the nature and purpose of the opt-out tariff," and should thus be included in this proceeding's record and considered by the Commission. RCG's initial brief, p. 6. Second, the RCG argues that Consumers' testimony and exhibits do not adequately support the fees imposed by the utility's opt-out tariff, and--by failing to include a full cost-of-service study dealing solely with the issue of AMI--fail to constitute the competent, material, and substantial evidence required for Commission approval.

[5] With regard to such "concerns," portions of Mr. Crandall's testimony--as well as two related exhibits--addressed issues that the RCG currently has (and which it raised in previous cases involving Consumers' AMI program) concerning alleged health, safety, and privacy matters relating to the installation and operation of transmitting meters. See, 2 Tr. 122-129. Both the utility and the Staff moved to strike that proposed evidence on the grounds that it was beyond the scope of this remand proceeding as expressly defined by both the Court of Appeals and the Commission. At the start of the evidentiary hearing, the ALJ agreed with Consumers and the Staff, and struck both that testimony and its two related exhibits, which were marked (although not received into evidence) as Exhibits RCG-2 and RCG-4. See, 2 Tr. 17-40. The RCG's appeal of that ruling will be addressed later in this PFD.

See, Id., pp. 15-21. Third, the RCG asserts that the Commission should either eliminate or greatly reduce the monthly opt-out fees imposed on customers requesting non-transmitting meters who concurrently agree to “self-read and report their monthly energy consumption,” and who further agree to “participate in the company’s budget payment plan.” Id., p. 21.

B. Attorney General

In this proceeding, the Attorney General offered testimony and exhibits from its witness, Sebastian Coppola, an independent business consultant focusing on issues related to energy and utility regulation. Mr. Coppola began his presentation by asserting that, under Consumers’ current AMI opt-out tariff language: (1) if a customer elects to opt-out of the AMI program prior to having a transmitting meter installed--effectively choosing to simply retain his or her existing analog meter--a one-time fee of $69.39 is imposed by the utility on the grounds that the company should “recover the cost of exception processing,” as well as the eventual need to replace the analog meter with a [transmitting] meter once the customer moves out of the premises;” (2) if, on the other hand, the customer already has a transmitting meter that would then need to be replaced with a non-transmitting analog meter, a charge of $123.91 is imposed, which allegedly covers the cost of switching the meters the first time, and then reinstalling the transmitting meter “once the customer vacates the premises,” plus the cost of exception processing; and (3) an added monthly charge of $9.72 is imposed for each customer who opts-out of the program. 2 Tr. 141-142. Along these lines, this witness pointed out that, in Consumers’ on-going general electric rate case (i.e., Case No. U-17990), the utility is seeking to increase the upfront charge for those who to opt-out of its AMI program to

$163.82 and $219.48, respectively, while also raising the monthly charge to $19.43. Id., at 143.

Moreover, through his testimony and proposed exhibits, this witness essentially offered four primary assertions. First, Mr. Coppola claimed that no upfront fee should be applied to customers who elect to continue their use of a non-transmitting (i.e., analog) meter, and that those customers who wish to have an existing transmitting meter replaced with an analog meter should only be charged a rate covering the cost of that particular meter exchange, as opposed to also paying for any subsequent switch back to a transmitting meter at the premises in question. See, 2 Tr. 145-146. Second, he asserted that the opt-out fees currently imposed by Consumers by way of the Commission's previous orders, as well as the higher fees that the utility seeks to impose via its presentation in Case No. U-17990, are clearly excessive when compared to those charged by DTE Electric Company (DTE). See, 2 Tr. 147-148; See also, 2 Tr. 149-151. Third, Mr. Coppola took issue with Consumers' apparent inclusion of the entire cost of "system development for exception processing" in its calculation of the upfront fee to be assessed to opt-out customers, and he instead asserted that those costs "should be amortized over a 15-year period and recovered through the monthly fee" billed to any such customers. 2 Tr. 148-149. Fourth and finally, he argued that although the utility did include some cost offsets suggested by the Staff in the final computation of the opt-out fees arising from Case No. U-17087, no such offsets appear to have been included in the calculation of the monthly opt-out fees proposed by Consumers in the context of Case Nos. U-17735 and U-17990. See, 2 Tr. 151-152.

In light of Mr. Coppola's analysis, the Attorney General contends that none of Consumers' customers who elect to opt out of the utility's AMI program and instead elect to simply keep their existing analog meters should be assessed the current upfront charge, let alone the higher charge suggested by the company in Case No. U-17990. See, Attorney General's initial brief, pp. 6-7. As for those customers who seek to switch from an existing transmitting meter to a non-transmitting device, the Attorney General argues that the $123.91 upfront charge should be cut approximately in half, apparently on the grounds that no costs should be assigned to that customer for the initial installation of the transmitting meter. See, Id., pp. 7-8. With regard to the monthly op-out fee, he concludes by contending that, based on evidence that was offered in Case No. U-17990, this charge should be reduced to between $7.89 and $8.18. See, Attorney General's reply brief, p. 4.

C. Consumers

The utility's witness in this case was Lincoln D. Warriner, a Financial Benchmarking Analyst in the Economic Portfolio Management Section of Consumers' Distribution Operations, Engineering, and Transmission Department. According to Mr. Warriner, the one-time opt-out charge approved in Case No. U-17087 (which, as noted previously, sits at $69.39 if the customer notifies the utility that it wants to opt-out prior to the installation of a transmitting meter, or $123.91 if the notification occurs after the new meter's installation) and the Commission-authorized monthly charge of $9.72 were designed, respectively, to cover the upfront costs and the monthly expenses incurred by the utility for establishing and operating the opt-out program. See, 2 Tr. 50-51.

In support of those assertions, he began by testifying that the $54.52 difference between the fee assessed to customers who opt out before the transmitting meter is installed and those that do so after installation is based on the following:

> All opt-out customers are charged $39.52 (included in the one-time charge) to recover the costs associated with restoring the customer's service location to a standard smart meter installation at the time when a customer moves out of their current service address. This charge is collected from the customer who makes the opt-out choice so that subsequent customers, or other customers in general, are not charged for that incremental cost of a meter exchange outside of the smart meter installation program. A customer that notifies the company of [its] desire to opt out of a smart meter installation after the smart meter installation has already occurred is charged an additional $39.52 to recover the costs that are already incurred to replace the already installed smart meter with a replacement non-communicating meter. Other incremental charges factored into the one-time charge for a post-smart meter installation opt-out include a $15.00 charge to create meter exchange work orders and an additional $15.00 charge to make revisions to data in our customers' service and billing system to include the opt-out customer in the company's monthly billing process for manually-read meters. These differences are offset in part by a $15.00 charge that is included in the one-time charge for pre-smart meter installation opt-out that covers costs associated with cancelling the scheduled smart meter installation work order and notifying the smart meter installers that an existing meter should not be replaced at the opt-out customer's service location. 2 Tr. 52.

Mr. Warriner went on to testify that the one-time charges discussed above also include the recovery of a portion of the costs incurred for: (1) maintaining and testing an inventory of replacement analog meters, estimated at $0.47 per meter; (2) developing business processes and related systems to support the opt-out process, expected to cost another $0.47 per customer; (3) providing approximately $6.44 in customer service support to assist customers during their enrollment in the opt-out program; and (4) providing its retained meter readers with the periodic replacement of their hand-held meter reading devices, which was expected to cost $3.89 per opt-out customer. See, 2 Tr. 53.

Turning to the issue of the monthly opt-out fee, Mr. Warriner stated that the initial $11.12 figure calculated by Consumers was based on the cost of retaining 35 meter readers, the expense of modifying its proposed system to accommodate manual meter reads, and the cost of continuing its meter testing program. See, Id. However, and as mentioned earlier in this PFD, he went on to note that (based on the Staff's cost-of-service analysis, which concluded that several of the costs included in the utility's calculation were already being recovered in its base rates), the monthly fee ultimately adopted by the Commission in Case Nos. U-17087 and U-17735 was reduced to $9.72, where it remains today. See, 2 Tr. 53-57.

Furthermore, Mr. Warriner pointed out that evidence received in Consumers' current general electric rate case clearly shows that not only are the current opt-out charges imposed by the utility reasonable and cost-based, they are quite likely to be unreasonably low. In this regard, he asserted that the updated information provided by the company in Case No. U-17990 shows that:

> The AMI opt-out program system's development costs are higher than originally estimated in Case No. U-17087, and that those increased costs are being caused by a smaller than originally projected number of customers who have decided to opt out of receiving a smart meter.

See, Consumers' initial brief, p. 8, citing 2 Tr. 63-65.

Nevertheless, Mr. Warriner explicitly stated by way of his rebuttal testimony that Consumers was not--at least in the context of this remand proceeding--asking the Commission to increase the opt-out charges approved in Case Nos. U-17087 and U-17735. See, 2 Tr. 72-73.

In the course of his rebuttal testimony, Mr. Warriner also refuted assertions from the Attorney General's witness to the effect that customers who notify the utility of their decision to retain their non-transmitting meter prior to the installation of a smart meter do not impose any incremental cost on the company, but rather save Consumers money by way of their actions. With regard to such assertions, Mr. Warriner pointed out that because the company is "transitioning to smart meters as the standard metering technology for measuring energy consumption by customers," as well as providing information that can be used to "support other operational benefits," allowing a segment of its customer base to "utilize non-standard metering technology" has forced Consumers to develop business processes and business changes solely to support the few customers that seek to opt out of the overall metering structure. 2 Tr. 75. Turning next to Mr. Coppola's assertion that it is unfair to include in the computation of opt-out charges the cost of returning a structure to standard (in this situation, transmitting) metering technology when a customer moves out, Mr. Warriner testified as follows:

> Smart meters are the Company's standard metering technology, and that technology is being installed throughout our service area. The installation costs of a programed upgrade of metering technology are included in the Company's base rate requests for recovery of smart meters. The incremental costs associated with performing meter upgrades at the time a customer who previously opted out of the Advanced Metering Infrastructure ("AMI") program moves out of an existing service address is <u>not</u> part of the installation cost. <u>Id</u>., at 76 (emphasis in original).

Mr. Warriner also disputed Mr. Coppola's claim to the effect that Consumers should recover the one-time costs arising from the establishment of computer system capabilities to administer the opt-out program by way of amortized monthly fees. According to Mr. Warriner, amortizing such costs over time would likely mean that some customers "would pay more or less than average for system development costs based on the length of time they continue to take service under the opt-out program." 2 Tr. 78. In contrast, the utility asserts that its approach to the recovery of these costs is "fair to all customers and reasonable." Consumers' initial brief, p. 12. This witness further claimed that Mr. Coppola's reliance upon DTE's opt-out process should be disregarded on the grounds that it does not provide "a useful comparison" because Consumers has elected to implement a "data communications technology that is different from DTE's technology, and [thus] DTE's costs are not relevant to the development of a cost-based tariff" to be applied in Consumers' service territory. 2 Tr. 79.

Mr. Warriner's rebuttal testimony also took issue with several proposals offered by the RCG's witness, Mr. Crandall. Among the claims rebutted by Mr. Warriner were those to the effect that (1) opt-out customers do not cause--and thus should not be held accountable for--any upfront or monthly charges, (2) regardless of their actions, opt-out customers should never have their service terminated for failure to allow the company to install and activate a transmitting meter, (3) alternatively, opt-out customers should be able to avoid the imposition of opt-out charges if they agree to read their own meters and participate in the utility's monthly budget plan, and (4) Consumers should be directed to perform a specific cost-of-service study and net energy assessment of its AMI program. See, 2 Tr. 85-91. With regard to this last claim by the RGC's witness, Mr. Warriner stated that:

> Opt-out customers are similarly situated with other residential customers, therefore they do not need a separate cost of service study to pay charges for special services, such as the Non-Transmitting Meter Tariff charges. In my opinion, the Company has provided detailed quantification of the costs that are appropriate to include in the upfront and monthly opt-out charges. An additional cost of service study should not be required.
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> * * *
>
> [Also], Mr. Crandall's recommendation [to require a net energy assessment] is vague and unrelated to this proceeding. I do not see a connection between what Mr. Crandall claims on page 16 of his testimony and the

> opt-out charges that are the subject of this proceeding. I suggest [that] the Commission disregard Mr. Crandall's recommendation to perform a net energy assessment as part of the evaluation of opt-out charges for non-standard metering customers. 2 Tr. 90-91 (citations omitted).

Based largely on the points made by its witness, both through his direct and rebuttal testimony, Consumers argues that the Commission should "reaffirm the validity" of the AMI opt-out charges initially established in Case No. U-17087 and retained in the context of Case No. U-17735. See, Consumers' initial brief, p. 17. In so arguing, the utility asserts that those charges are cost-based, are not already collected through the company's base rates, and constitute neither a tax, sanction, nor penalty. See, Id., pp. 13-17.

D. Staff

The Staff's first witness was Nicholas M. Revere, the Manager of the Rates and Tariff's Section of the Commission's Regulated Energy Division. The focus of his testimony, he asserted, concerned those maters "articulated by the Court of Appeals" in its remand order, namely (1) clarifying "the nature and purpose of [Consumers'] opt-out tariff by addressing whether the tariff represents a reimbursement for costs of service" as opposed to "something more akin to a tax, sanction, or penalty," and (2) assessing whether "any of [those] costs were already accounted for in the utility's rates." 2 Tr. 97, citing the April 30 order, p. 7.

With regard to the first of those issues, Mr. Revere testified that the nature of Consumers' opt-out tariff "is a reimbursement for costs of service, and is in no way intended to be a tax, sanction, or penalty" imposed upon customers that desire not to be involved in the AMI program. Id. He went to state that, both in his view currently and as he testified in Case No. U-17735:

> Costs are considered to be caused by a customer if they are incurred to serve that customer in a way that differs from other customers. In a cost of service study, customers are grouped into classes of similarly situated customers (e.g., customers served at the secondary voltage levels). The customers within these classes are considered to cause costs in a similar way. Sometimes, customers that would otherwise be considered similarly situated, but cause the company to incur specific costs differently from the other seemingly similarly situated customers, are not separated out into a different class (e.g., lighting customers with more expensive ornamental poles). In such a case, those costs which are incurred to serve a customer or group of customers differently are specifically assigned to those customers. …[T]he costs included in the monthly opt-out charges are the costs that will remain only to serve those customers who have chosen not to receive the Company's AMI meters once AMI rollout is completed. Once rollout is complete, most customers will not require meter reading expenses to be incurred by the Company. Only opt-out customers will require meter readers and associated equipment and expenses, though they are otherwise similarly situated to other customers. These costs are then caused only by opt-out customers, and should rightfully be collected from them. Other customers should not have to pay for costs caused solely by opt-out customers, whether they are "new" or not, any more than a lighting customer who does not choose a more expensive pole should have to pay for the costs of those who do.
>
> 2 Tr. 97-98 (citing Case No. U-17735, 9 Tr. 1868-1869).

Turning to the question of whether any of the opt-out charges that were initially authorized by the Commission in Case No U-17087 were being recovered twice, Mr. Revere testified that those charges "include an offset for the amount of meter reading costs already included in rates to avoid double recovery." Id., p. 99.

The Staff's second witness was Patrick L. Hudson, Manager of the Smart Grid Section of the Commission's Wholesale Markets Division. According to Mr. Hudson, the RCG was incorrect in asserting that Consumers, as opposed to its opt-out customers, constituted the causative factor of the various opt-out charges. Specifically, he testified that the utility chose AMI meters as the company's "default equipment to service residential customers" on a going-forward basis, and that the Commission has supported this choice via rate recovery granted in several cases. 2 Tr. 107. Moreover, he noted that although the Commission directed Consumers to offer its customers an AMI opt-out option, and further instructed the utility to use cost-of-service principles when calculating the opt-out charges, those actions indicate that the Commission has consistently believed that "customers who chose not to receive the company's default meter are the cost-causers for all costs associated with a non-transmitting meter option." Id. Finally, he stated that recommendations made by the RCG's witness to revise Consumers' opt-out tariff to both require prior consent by each customer before installing a smart meter and to adopt the rates established for other states are both "well outside the scope of this remand proceeding." 2 Tr. 108.

In light of the testimony and exhibits offered in this case, the Staff requests that the Commission find that: (1) Consumers' opt-out tariff merely constitutes a reimbursement for the cost of allowing customers to elect not to use a smart meter, and does not constitute a tax, sanction, or penalty; (2) the currently-approved AMI opt-out fees are not being recovered in Consumers' existing base rates; (3) with the downward adjustment that was proposed by the Staff and adopted by the Commission in Case Nos. U-17087 and U-17735, the utility's existing opt-out tariff charges are cost-based; and (4) all other requests made in this case are beyond the scope of the remand proceeding. See, Staff's initial brief, pp. 8-9, and its reply brief, pp. 9-10.

III.

DISCUSSION

As noted at the outset of this PFD, the issues to be addressed in this remand proceeding are quite narrow. Namely, as directed by the Court of Appeals in its April 30 order, and subsequently confirmed by the Commission in its March 29 order, the extent of the current case is to (1) clarify whether Consumers' AMI opt-out tariff simply provides for the reimbursement--on a cost-of-service basis--of expenses arising from any customer's election to not participate in the utility's AMI program, as opposed to constituting a tax, sanction, or penalty imposed for making that choice, and (2) whether any of the costs arising from such an election were already being recovered in the company's base rates.

However, before turning to a discussion of those two matters, one evidentiary issue needs to be addressed. This concerns the RCG's appeal of the ALJ's October 5, 2016 ruling granting the Motions to Strike a portion of the direct testimony offered by its witness, Mr. Crandall, which were filed by Consumers and the Staff. See, 2 Tr. 17-40; See also, the RCG's initial brief, pp. 2-15.

A. The RCG's Appeal of the Ruling on Motions to Strike

On September 22, 2016, and in conformance with the schedule adopted for Case No. U-17087, both Consumers and the Staff filed Motions to Strike portions of the testimony offered by Mr. Crandall. The RCG filed a joint response to those motions on October 3, 2016. Both motions were granted in full prior to the receipt of testimony and exhibits in this case. See, 2 Tr. 40.

The testimony in question attempted to address alleged health, safety, and data privacy concerns that the RCG has repeatedly asserted in cases involving the potential implementation of AMI programs. According to the RCG, this testimony (which is set forth in "line-out" form on 2 Tr. 119, as well as 2 Tr. 122-129) is within the scope of the Court's April 30 remand order. See, the RCG's initial brief, pp. 3-6. Specifically, the RCG contends that the "actual costs" arising from Consumers' AMI program should be viewed as including the health, safety, and privacy issues discussed in the stricken testimony. See, Id., p. 3.[6]

The ALJ cannot agree with the RCG's assertion with regard to this evidence. As correctly noted by both Consumers and the Staff, Mr. Crandall's stricken testimony (along with its two related exhibits) clearly falls outside the scope of this remand proceeding as expressly defined by both the Court of Appeals and the Commission. See, Consumers' reply brief, pp. 8-17, and Staff's reply brief, pp. 1-7. For example, the Court specifically stated that, upon remand, the Commission was simply to clarify whether Consumers' AMI opt-out tariff was designed to recover the utility's cost-of-service for allowing customers to retain or re-install analog meters, as opposed to imposing some sort of tax, sanction, or penalty upon them for electing to do so. See, April 30 order, pp. 5-6. Similarly, the Commission (in its March 29 order) explicitly limited the issues to be argued, reviewed, and addressed in the current remand proceeding to be: (1) whether the tariff led only to

[6] In support of its position, the RCG relies heavily on statements culled from what one may view as a concurring opinion, but might more accurately view as a dissenting opinion, authored by Judge O'Connell in conjunction with the Court of Appeals' July 22, 2015 opinion concerning Dockets Nos. 317434 and 317456, wherein that Court essentially agreed with the Commission that it could authorize Consumers' initiation of an AMI program and collect the costs of that program from its ratepayers. Regardless of how one might view it, Judge O'Connell's opinion carries little or no legal weight regarding the resolution of this matter.

the recovery, on a cost-of-service basis, of expenses arising from the decision of certain customers to require the retention or re-installation of a non-transmitting meter, as opposed to serving as a form of punishment imposed on such customers, and (2) whether those particular costs were already being recovered through Consumers' base rates. See, the April 30 order, pp. 5-6.

Moreover, the decision to both strike that testimony and preclude receipt of the two related exhibits is fully consistent with the Commission's November 19, 2015 order in Case No. U-17735, wherein the Commission affirmed the ALJ's decision to exclude the RCG's proposed testimony relating to health, safety, and privacy issues arising from the implementation of AMI. Similarly, the ALJ's ruling in this proceeding directly corresponds with the Court of Appeals' decision in In re Application of Detroit Edison Company to Implement Opt-Out Program, another unpublished per curiam opinion from the Court, issued on February 19, 2015 [in Docket Nos. 316728 and 316781], in which the Court held that issues concerning health, safety, and privacy with respect to a utility's implementation of an AMI program had been previously addressed by the Commission in the context of Case No. U-17000, and were therefore resolved.[7] As a result, the RCG's renewed attempts to introduce evidence concerning alleged health, safety, and privacy

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[7] In Case No. U-17000, the Commission considered (among a host of other AMI-related issues) the Staff's report regarding AMI in general and concluded that smart meters are rapidly becoming the standard meter used by the utility industry. See, the Commission's September 11, 2012 order in Case No. U-17000, pp. 3-4. In the context of its report, the Staff specifically concluded that "after careful review of the available literature and studies," the "health risk from the installation and operation of metering systems using radio transmitters is insignificant," and that "federal health and safety regulations provide assurance that smart meters represent a safe technology." Id., p. 3. The Commission subsequently established a separate docket which resolved issues relating to such things as customer data collection and privacy, and which resulted in the current data privacy tariff language used by Consumers. See, the Commission's June 28 and October 17, 2013 orders in case No. U-17102.

issues arising from the implementation and conduct of an AMI program constitute an improper collateral attack on both the above-mentioned Commission orders and the Court of Appeals' decisions upholding them.

For these reasons, the ALJ recommends that the Commission reject the RCG's request to revisit the issues of health, safety, and privacy as it relates to Consumers' AMI program, and uphold the decision to strike Mr. Crandall's testimony and exhibits covering those matters.

B. AMI Opt-Out Charges are a Cost-of-Service-Based Reimbursement

As noted above, the first question that the Court of Appeals (and, subsequently, the Commission) sought to have answered by way of this remand proceeding was whether Consumers' AMI opt-out tariff simply provides for the reimbursement--on a cost-of-service basis--of expenses arising from any customer's election to not participate in the utility's AMI program, as opposed to constituting a tax, sanction, or penalty imposed on the customer for making that choice. Based on the evidence made available for use in this proceeding, it appears that the fees contained in that tariff are, indeed, cost-based charges arising from certain customers' elections to opt-out of the AMI program, as opposed to some sort of punishment, and thus may be retained for use by the utility.

As specifically noted above, Mr. Warriner provided a step-by-step analysis of how Consumers developed the opt-out fees that were adopted by the Commission in Case Nos. U-17087 and U-17735, and which currently remain in effect. That analysis, and the costs that the utility assigned to its different components, is specified below.

With regard to the upfront charges assessed to opt-out customers, Mr. Warriner testified that those fees were designed to collect the cost of ultimately installing a transmitting meter at a site from which a customer who elected to keep an analog meter had subsequently left (thus requiring the installation of a transmitting meter for use by the structure's next inhabitants), and the need to impose a higher upfront charge upon those who elected to switch from an existing smart meter back to an analog-based meter (which would, thus, require two meter installations). See, 2 Tr. 51-52. He further testified to the fact that those two upfront charges also included amounts necessary to cover the cost of (1) maintaining and testing an inventory of analog meters, (2) developing specific business processes, as well as associated systems, necessary to support the opt-out option, (3) providing the customer service support needed to enroll opt-out customers in the program, and (4) periodically replacing the handheld meters that the program would necessitate. See, Id., 53. As for the monthly opt-out fee, Mr. Warriner essentially stated that this charge was structured to retain enough meter readers to perform an estimated 27,000 monthly readings for opt-out customers, well as the cost of meter testing and systems modification resulting from the opt-out program. See, Id.

Moreover, evidence supporting the cost-of-service basis for the various opt-out charges adopted in Case No. U-17087, subsequently retained by the Commission in Case No. U-17735, and proposed for continued use by way of this remand proceeding, can be found in the record initially assembled in Case No. U-17087. Specifically, and as noted by Consumers:

> Evidence supporting the cost-of-service principles upon which the Case No. U-17087 AMI opt-out rates were based is found in the underlying Case No. U-17087 record at 4 Tr. 548-550, 557, and Exhibit A-72 (LEY-4) (testimony and exhibit of Consumers Energy witness Youngdahl addressing the Company's AMI opt-out costs and tariff) and 7 Tr. 1933-1934 (testimony of Staff witness Jayasheela). In the underlying Case No. U-17087 proceeding, Staff witness Jayasheela testified:

> The Staff has reviewed the Company's cost estimates and determined that these estimates are based on the Company's experiences and past practices with meter reading and associated functions. Staff finds Consumers Energy's cost estimate to be reasonable, and the costs are consistent with other jurisdictions. However, the Staff recommends that the monthly charge should be reduced to remove the costs associated with meter reading, AMI capital investment, and expenses that are included in the rate under which the customer is taking electric service. 7 Tr. 1934.

As noted above, Consumers Energy accepted Staff's proposed credit to account for costs being recovered in base rates. The Commission approved the resulting cost-of-service based opt-out charges in the June 28, 2013 Order in Case No. U-17087 (page 9).

Consumers' initial brief, p. 7.

Furthermore, testimony offered by both of the Staff's witnesses in this proceeding provides additional support for finding that the use of the existing opt-out rates should be continued, at least for the time being.[8] As noted above, Messrs. Revere and Hudson fully agreed with Consumers that the opt-out fees included in its existing tariff constitute a simple reimbursement of costs that are being, and will continue to be, caused solely by those customers who elect--for whatever reason--not to participate in the utility's AMI program. See, 2 Tr. 97-98; See also, 2 Tr. 107. As such, and as quoted earlier in this PFD, Mr. Revere specifically testified that the company's opt-out tariff "is in no way intended to be a tax, sanction, or penalty." 2 Tr. 97.

[8] As noted in the overview of Mr. Warriner's testimony set forth earlier in this PFD, evidence received in the course of Consumers' current electric rate case (which is ongoing in Case No. U-17990) contends that even higher opt-out fees are justified. See, 2 Tr. 63-65. While asserting that such evidence shows that the rates in question upon remand are not unreasonably high, and may actually be too low, he further stated that (as incorrectly claimed by the Attorney General and the RCG), any increase in the utility's opt-out rates would be left for consideration in Case No. U-17990, and are not being requested in this proceeding. See, 2 Tr. 72-73. As a result, concerns raised by those intervenors regarding the fee changes that may ultimately arise from the resolution of that rate case are not germane to the proceeding at hand, and will not be formally addressed in this PFD.

For all of these reasons, the ALJ recommends that the Commission find that both the upfront and monthly fees approved for use in the course of Case No. U-17087, and which form the basis for this remand proceeding, are a cost-based reimbursement as opposed to a tax, sanction, or penalty.

C. <u>AMI Opt-Out Costs are Not Already Recovered in Base Rates</u>

The second (and, it turns out, significantly easier) question that the Commission was directed to answer on remand concerns whether Consumers is already recovering the costs of the AMI opt-out program through its existing base rates. In light of the testimony received in this case (both before and during remand), the answer appears to be no.

As explained by Consumers' witness, Mr. Warriner, as well as Staff witnesses Revere and Hudson, only those customers who choose to be covered by the utility's opt-out program cause the company to incur that particular program's costs. See 2 Tr. 75-76, 97-98, and 107 (citing, in part, the transcript in Case No. U-17735 at 9 Tr. 1868-1869). As specifically explained by Mr. Revere, the credit (often referred to as an offset) first proposed by Staff witness Jayasheela in the initial phase of Case No. U-17087, and which was supported by Consumers and ultimately adopted by the Commission in its June 28 order, is "included in the currently approved opt-out charge." 2 Tr. 99. As such, he continued:

> [T]he meter reading costs already accounted for in the Company's rates are not included in the opt-out charge. Any other costs that might otherwise be included in rates are offset by the inclusion of revenue from the opt-out charge as in a rate case. This is very similar to the treatment of other special charges designed to recoup the costs of special services supplied by the Company to customers. For example, when a customer requests a restoration of service, the Company assesses a $50 fee to the customer requesting the service (see Second Revised Sheet No. C-31.00 in the

> Company's rate book). The expense of sending a Company representative to the work site and the customer contact with the Company, as well as other costs associated with the service, are recorded on the Company's books. The revenue received from the customer is also included on the Company's books. In a rate case, the Company projects both the expense and revenue associated with the expected services, though the amount may be a small part of a much larger account and not projected separately. The revenue associated with the services is applied to the Company's revenue requirement, reducing rates paid by customers. Put another way, the amount of the expense included in rates associated with special services (such as restorations and opt-outs) is reduced by the amount directly paid by customers for those services. Therefore, the costs covered by the amount collected from customers through special charges (such as for restorations and opt-outs) is not otherwise included in rates.
>
> 2 Tr. 99-100.

In this particular case, Mr. Revere continued, the charges already approved in Case No. U-17087 (and which form the basis of this remand) include both an offset for the amount of meter reading expenses already included in Consumers' rates, as well as an offset for the costs of constructing and implementing the AMI system, which are also included in rates.[9] See, Id. Including these offsets in the calculation of the utility's AMI opt-out program charges, he concluded, "ensures that opt-out customers are not paying twice for any services provided by the Company." 2 Tr. 100.

Based on this testimony, the ALJ finds that the credits/offsets suggested by Ms. Jayasheela earlier in Case No. U-17087 (which were accepted by Consumers and form the basis of the existing Commission-approved opt-out fees) appear to adequately ensure that no double-recovery of their related expenses is now occurring. The ALJ thus

[9] In further support of this assertion, Mr. Warriner testified that revenues received in the form of AMI opt-out charges are treated as miscellaneous revenues in establishing the company's base rates, thus ensuring that all customers receive the revenue benefit related to the opt-out program as an offset to its costs. See, 2 Tr. 66.

recommends that the Commission hold, in this remand proceeding, that Consumers' existing AMI opt-out charges are not already recovered by way of the utility's base rates.

D. Miscellaneous Issues

Although arguably (and in some cases, clearly) beyond the scope of this particular remand proceeding, the intervenors and their respective witnesses have raised seven issues relating to the fees currently imposed for opting out of Consumers' AMI program. This PFD will address each of these matters briefly, largely on the basis that it may assist the Commission in its future considerations of how to treat the issue of AMI opt-out charges. However, in doing so, the ALJ is not suggesting that the Commission is in any way obligated to follow the same path and, in contrast, may simply view these issues as beyond the bounds of the remand proceeding.

First, based on testimony from its witness, Mr. Crandall, the RCG asserted that no fees whatsoever should be assessed for opting out of the utility's AMI program. See, RCG's initial brief, p. 12. In making this assertion, the RCG contends that testimony offered by the utility's witness (Mr. Warriner) in Case No. U-17990 to the effect that its AMI program "should save approximately $29 million on a net basis," effectively means that no cost recovery is required from the utility's opt-out customers. See, Id. However, such a claim ignores the fact that to save that $29 million, upfront costs (i.e., expenses to design, construct, and operate the AMI program) will need to be expended. These include the additional costs of implementing the opt-out program. As such, the ALJ concludes that the RCG's assertion in this regard should be rejected.

Second, and again based on Mr. Crandall's testimony, the RCG argues that, without having undertaken and offered the results of a separate cost of service study and an audit regarding the utility's existing AMI opt-out charges, insufficient evidence exists for adopting the fees set forth in Consumers' tariff sheets. See, the RCG's initial brief, pp. 15-21, citing 2 Tr. 121-122. However, this argument has been directly considered and rejected by the Commission in the recent past. Specifically, in the January 19 order, the Commission specifically cited (in support of its decision to retain the existing opt-out fees) the cost-of-service-related testimony offered by utility and Staff witnesses alike in Case No. U-17087, as well as Mr. Warriner's testimony with regard to this issue in Case No. U-17735. See, the January 19 order, pp. 127-128. As a result, the ALJ finds this to be a settled issue, and recommends that the Commission either reject or ignore the RCG's arguments on this point.

Third, in any event, the RCG claims that the utility should either eliminate or greatly reduce any AMI opt-out fees for customers who agree to read their own meters and also sign up for the company's budget payment plan. See, RCG's initial brief, pp. 21-22. In support of this claim, the RCG renews its earlier contention that "opt-out customers are already paying in base rates all costs of the AMI program." Id., p. 21. However, that particular contention was expressly rejected earlier in this PFD, largely in light of the institution of credits/offsets designed to avoid the possibility of double recovery. Moreover, as with the previous issue, the RCG's assertion has been directly considered and rejected by the Commission. See, the November 19 order at pp. 127-130. As such, the ALJ recommends that the proposal be rejected once again.

Fourth, the Attorney General--citing testimony from its witness, Mr. Coppola--argues that no upfront charge should be assessed if a customer simply desires to retain an analog meter, and that only one meter-installation charge should be assessed if a customer asks to have an existing transmitting meter exchanged for an analog device. See, Attorney General's brief, pp. 6-7, citing 2 Tr. 145-146. However, doing so would basically require the next customer occupying that premises--or other ratepayers as a whole--to cover the meter-installation costs arising from the opt-out customer's previous decision to avoid having a transmitting meter operating at that location while he or she controlled the property. Because it is clearly unfair to require other customers to bear the additional costs that were caused solely by the opt-out customer's actions, the ALJ recommends that the Commission reject any such suggestion.

Fifth, apparently relying on the testimony of Mr. Coppola, the Attorney General asserts that, at least when compared to the fees assessed by DTE, the opt-out charges imposed by Consumers are excessive. See, Attorney General's initial brief, pp. 8-9; See also, 2 Tr. 147-148. However, as pointed out by Consumers, its "opt-out technology, processes, and related costs are completely different from those of DTE." Consumers' reply brief, p. 5, citing 2 Tr. 79. Moreover, although the Attorney General's assertions do raise questions regarding whether a less expensive opt-out structure might have been adopted by Consumers, that issue would appear to be beyond the narrow scope of this remand proceeding. As a result, the ALJ does not recommend that the Commission use this factor as a reason to currently reject the opt-out charges approved for Consumers in Case No. U-17087 and upheld in Case No. U-17735.

Sixth, Mr. Coppola went on to recommend that any alleged expenses arising from developing a system to handle "exception processing" should be removed from the computation of the upfront fee and, instead, amortized over 15 years by way of charges assessed to Consumers' opt-out customers. See, 2 Tr. 148-149. The Attorney General supports using an amortization structure like that suggested by his witness. <u>See</u>, Attorney General's initial brief, pp. 9-10. However, as specifically noted by Consumers' witness, Mr. Warriner:

> The opt-out tariff is designed to recover the participating customer's share of the costs incurred by the Company to provide an option where customers can chose a non-standard meter. Including an amortization of these costs over time would mean that some customers would pay more or less than average for the system development costs based on the length of time they continue to take service under the opt-out option. 2 Tr. 78.

Based on Mr. Warriner's above-quoted testimony, the ALJ finds that the most equitable treatment of those exception processing costs (as well as all other system development expenses) would be to include them in the upfront charge assessed equally to all opt-out customers. Therefore, it is recommended that the amortization structure proposed by Mr. Coppola and supported by the Attorney General be rejected.

Finally, the Attorney General asserted that (in addition to adopting Mr. Coppola's suggestion to charge opt-out customers nothing for the initial request to retain an analog meter) the Commission should use testimony offered in Case No. U-17990 to reduce the monthly opt-out fee to either $7.89 or $8.18, as opposed to the continued application of the existing $9.72 monthly fee. <u>See</u>, Attorney General's initial brief, p. 12, citing 2 Tr. 152-153. Again, the ALJ disagrees. Any request for approval of those slightly lower monthly opt-out fees will ultimately be addressed through the Commission's upcoming order in Case No. U-17990. As repeatedly noted above, the scope of the present remand proceeding is quite narrow. Because the Attorney General's request falls outside of the parameters set for this remand case, the ALJ recommends that the Commission also reject this request.

IV.

CONCLUSION

Based on the foregoing discussion, findings, and recommendations, it appears that the evidence presented in all pertinent cases--including that received in this remand proceeding--shows that (1) Consumers' AMI opt-out tariff represents a reimbursement for costs of service, as opposed to a tax, sanction, or penalty, and (2) none of the expenses related to the utility's opt-out program--and recovered through that tariff--are already accounted for in the company's rates. As a result, the ALJ recommends that the Commission reaffirm its June 28, 2013 decision in Case No. U-17087.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

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Mark E. Cummins
Administrative Law Judge

January 19, 2017
Lansing, Michigan